

Contract Number *[Contract Number]*

for

[Purchased and Associated Services]

Between the

[Agency]

and

[Name of Vendor]

Effective Date: _____

(add date when signed by last party of execution)

PURCHASED SERVICES CONTRACT

Table of Contents

1. Definition of Terms.....	2
-----------------------------	---

CONTRACT TERM

2. Term (<i>required term</i>).....	3
3. Survivorship.....	4

PRICING, INVOICE AND PAYMENT

4. Pricing (<i>required term</i>).....	6
5. Advance Payment Prohibited(<i>required term</i>).....	6
6. Taxes.....	6
7. Invoice and Payment(<i>required term</i>).....	6
8. Overpayments to Vendor.....	7

VENDOR RESPONSIBILITIES

9. Purchased Services and Statement of Work(<i>required term</i>).....	7
10. Commencement of Work.....	7
11. Ownership of Work Product(<i>required term</i>).....	7
12. Installation (Site) Security.....	8
13. Use of Purchaser's Property and Facilities.....	8
14. Vendor Commitments, Warranties, and Representations.....	8
15. Minority and Women's Business Enterprise (MWBE) Participation.....	9
16. Protection of Purchaser's Confidential Information.....	9
17. Subpoena.....	10

CONTRACT TERMINATION

18. Termination for Default(<i>required term</i>).....	10
19. Termination for Convenience(<i>required term</i>).....	10
20. Termination for Withdrawal of Authority.....	11
21. Termination for Non-Allocation of Funds.....	11
22. Termination for Conflict of Interest.....	11
23. Termination Procedure.....	11
24. Covenant Against Contingent Fees.....	12

DISPUTES AND REMEDIES

25. Disputes(<i>required term</i>).....	13
26. Attorneys' Fees and Costs.....	14
27. Non-Exclusive Remedies.....	14
28. Failure to Perform.....	14
29. Limitation of Liability(<i>required term</i>).....	14

CONTRACT ADMINISTRATION

30. Notices.....	15
31. Section Headings, Incorporated Documents and Order of Precedence.....	15
32. Entire Agreement(<i>required term</i>).....	16
33. Authority for Modifications and Amendments.....	16
34. Changes and Modifications.....	16
35. Purchaser Contract Administrator.....	17
36. Vendor's Account Manager.....	17
37. Independent Status of Vendor.....	17
38. Governing Law(<i>required term</i>).....	18
39. Subcontractors.....	18
40. Assignment.....	18
41. Publicity(<i>required term</i>).....	19
42. Review of Vendor's Record(<i>required term</i>).....	19

GENERAL

43. Patent and Copyright Indemnification(<i>required term</i>).....	19
44. Save Harmless(<i>required term</i>).....	20
45. Insurance.....	20
46. Industrial Insurance Coverage.....	21
47. Licensing Standards.....	22
48. OSHA/WISHA.....	22
49. Compliance with Civil Rights Law(<i>required term</i>).....	22
50. Severability(<i>required term</i>).....	23
51. Waiver(<i>required term</i>).....	23
52. Treatment of Assets.....	23
53. Vendor's Proprietary Information.....	24

CONTRACT EXECUTION

54. Authority to Bind.....	24
55. Counterparts.....	24

SCHEDULES

Schedule A: Authorized Services and Rate List

Schedule B: MWBE Certification[*if applicable*]

Schedule C: Statement of Work[*example*]

EXHIBITS

Exhibit A: [Name of Acquisition] Request for [Proposal/Quotation/Quotation and Qualification]

Exhibit B: Vendor's Proposal for [Name of Acquisition]

Note: Exhibits A and B are not attached but are available upon request from the Purchaser Contract Administrator

Table of Contents– To list and identify the provisions contained within the contract. This section, at the beginning of the contract, should contain a categorical list of all the provisions contained in the contract with page number references.

[SAMPLE]

PURCHASED SERVICES CONTRACT
NUMBER [XXX-XXX-XXX]

PARTIES*(required term)*

This Purchased Services Contract (hereinafter referred to as "Contract") is entered into by and between the state of Washington, acting by and through [Agency Name], an agency of Washington State government (hereinafter referred to as "Purchaser" or "[Agency Name]" or "[Department/Commission/Board]") located at P.O. Box 4[xxxx], Olympia, Washington, 98504[xxxx] and [Vendor's Name], a [corporation, sole proprietorship, partnership or other business form] with TIN [FEIN # or SSN in lieu] licensed to conduct business in the state of Washington under UBI number [UBI number] (hereinafter referred to as "Vendor"), located at [list Vendor's address here] for the purpose of [list purpose of Vendor's business]

This section identifies the parties entering into the contract. It states the name of the Purchaser, the Vendor's legal corporate name and address, state Uniform Business Identifier number (issued by the Department of Revenue), and the Federal Tax Identification number or Social Security number of the Vendor.

RECITALS

WHEREAS, the state of Washington, acting by and through [Agency Name], issued a Request for [Proposal/Quotation/Quotations and Qualifications] [RFP]/[RFQ]/[RFQQ] dated [Date], (Exhibit A) to [describe purpose of Acquisition] in accordance with its authority under chapter 43.105 RCW; and,

WHEREAS, the [Vendor's Name] submitted a timely proposal to the [Agency Name]'s [RFP/RFQ/RFQQ] (Exhibit B); and,

WHEREAS, the [Agency Name] evaluated all proposals properly submitted in response to the above-referenced [RFP/RFQ/RFQQ] and has identified [Vendor's Name] as the apparently successful Vendor; and,

WHEREAS, the [Agency Name] has determined that entering into a Contract with [Vendor's Name] will meet the needs of the Purchaser and will be in the Purchaser's best interest;

[If not a competitive acquisition, discuss Sole Source or other procurement method in place of the above Recitals.]

NOW THEREFORE, the Purchaser awards to [Vendor's Name] this Purchased Services Contract which shall govern Vendor's furnishing to [Agency Name] the [describe services being purchased] as indicated on Schedule A - Authorized Services and Rate List (attached hereto) in accordance with the terms and conditions of this Contract. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

Recitals – Every contract must provide for contractual considerations. If the contract results from an RFP or RFQ, include a recitation as to the basis for the contract, and where appropriate, included by reference in this section. Any schedules of Equipment, Software or services to be acquired together with prices/discounts should be included by reference and attached to the contract

1. Definition of Terms

[Definition of Terms not included in this list but which are pertinent to the individual contract should be added to this list.]

Definitions as used throughout this Contract shall have the meanings set forth below.

“Acceptance” shall mean a written notice from the Purchaser to the Vendor that the Services have met the requirements and have been accepted.

“Business Days and Hours” shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“Contract” shall mean this document, all schedules and exhibits, and all amendments hereto.

“[Department/Commission/Board]” shall mean the same as “Purchaser”, the *[Agency Name]*.

“Execution Date” shall mean the date of the last signature of a party to this Contract.

“Exhibit A” shall mean the Request for *[Proposal/Quotation/Quotations and Qualifications]* *[(RFP)/(RFQ)/(RFQQ)]* for *[Describe Acquisition]* issued by the Washington State *[Agency Name]* dated *[Date]*.

“Exhibit B” shall mean the Vendor’s response dated *[Date]*.

“FEIN” shall mean the Vendor’s Federal Employer Identification Number.

“Purchased Services” also referred to herein as “Services” shall mean those Services and activities provided by Vendor as set forth in Schedule A. Purchased Services shall include those Services specified in RCW 43.105.020 and RCW 39.29.006

“Purchaser” shall mean the state of Washington, *[Agency Name]*, any division, section, office, unit or other entity of the *[Agency Name]* or any of the officers or other officials lawfully representing the *[Agency Name]*, which has executed this Contract and a Statement of Work with the Vendor for specified Services.

“Purchaser Contract Administrator” shall mean that person designated by the *[Agency Name]* to administer this Contract on behalf of the *[Agency Name]* as further defined in the section titled Purchaser Contract Administrator.

“Purchaser Contracting Officer” shall mean the *[the Agency’s Officer with signature authority]* or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the Contracting Officer acting within the limits of his/her authority.

“RCW” shall mean the Revised Code of Washington (Washington State Law).

“[RFP/RFQ/RFQQ]” shall mean the Request for *[Proposal/Quotation/Quotations and Qualifications]* used as a solicitation document in this procurement, as well as all amendments and modifications thereto. *[Use this definition only if the procurement was competitively bid.]*

“SSN” shall mean the Vendor’s Social Security Number if used in lieu of Federal Employer Identification Number as the Vendor’s Federal Tax Identification Number.

“Statement of Work” shall mean a separate statement of the work to be accomplished by the Vendor under the terms and conditions of this Contract. *[Depending upon process to be used by agency, include*

language such as: "Each Statement of Work shall be the result of competitive solicitation by the Purchaser."]

"Subcontractor" shall mean one not in the employment of the Vendor, who is performing all or part of those Services under this Contract under a separate contract with the Vendor. The term "Subcontractor" means Subcontractor(s) of any tier.

"TIN" shall mean the Vendor's Taxpayer Identification Number which may be either FEIN or SSN.

"UBI" shall mean the Vendor's Uniform Business Identifier issued by the Washington State Department of Revenue.

"Vendor" shall mean [Vendor's Name], its employees and agents. "Vendor" also includes any firm, provider, organization, individual, or other entity performing Services under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

"Vendor's Account Manager" shall mean a representative of the Vendor who is assigned as the primary contact person whom the [Agency Name] Contract Administrator shall work with for the duration of this Contract unless replaced, with advance Purchaser approval, by another representative.

Definition of Terms– To establish specific definitions for terms used within the contract
This section, near the front of the contract, should contain a definition of any potentially confusing, ambiguous, vague, unique, etc., terms or any other terms that may be appropriate and useful in the contract.

Contract Term

2. Term (required term)

2.1. Initial Term. The initial term of this Contract shall be [_____] (___) years, commencing upon the date of its execution by both the parties. The Execution Date of this Contract shall be the date of the last signature hereto.

[Include the following section if there will be subsequent terms allowed.]

2.2. Subsequent Terms. The term of this Contract may be extended by [_____] (___) additional [_____] (___) year periods: PROVIDED, The extensions shall be at the option of the Purchaser and shall be effected by the Purchaser giving written notice of its intent to extend the Contract to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term and Vendor accepting such extension prior to the expiration of the then current Contract term. The total term of this Contract shall not exceed five (5) years. No change in terms and conditions, including increased rates, shall be permitted during these extensions unless specifically set forth in this Contract.

[-OR- replace Subsequent Terms with the following]

xx. Subsequent Terms. The term of said Services shall be automatically extended for [_____] (___) additional [_____] (___) year periods unless terminated by the Purchaser by giving written notice of its decision not to renew to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term. No change in terms and conditions, increased rates, shall be permitted during these extensions unless specifically provided for in this Contract.

2.3. Term of Statement of Work. The term of any Statement of Work executed pursuant to the authority of this Contract shall be established by Purchaser as set forth therein. The Statement of

Work may otherwise be terminated in accordance with the termination sections of this Contract or as mutually agreed between the parties.

In some instances, agencies have needed purchased services on a short turnaround basis and have awarded multiple contracts for the same type of service, e.g., Access programming. The contracts are awarded with a period of performance, fees, and maximum dollar value but no work is authorized until a task order is initiated specifying the specific scope of work, duration, and cost for the task order. It is vital that agencies maintain the validity of the process by establishing a fair and impartial process up front by which the task orders will be assigned to the qualified firms. Selection of a capable project manager will be essential in ensuring a successful project.

3. Survivorship

All Services executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Disputes, Limitation of Liability, Patent and Copyright Indemnification and Protection of Purchaser's Confidential Information shall survive the termination of this Contract.

The contract should address the survivability of certain clauses

Pricing, Invoice and Payment

Contract payment types can be broadly divided into two categories: fixed-price and cost-reimbursable. Under a fixed price or lump sum contract, the Vendor is obligated to perform within the specified contract amount or exceed it at the Vendor's expense. The Vendor has full risk for profit or loss as governed by the costs. Under a cost-reimbursable contract when the scope of service may not be as clearly defined, the Vendor agrees to apply his/her best efforts to perform within the contract amount. The Vendor is reimbursed for incurred costs in increments or upon completion.

The primary considerations for determining the type of remuneration to use are technical and cost uncertainty. Technical uncertainty is the primary determinant. Limited uncertainty would indicate the use of a fixed-price contract, while high uncertainty indicates a cost-reimbursable contract.

Fixed Price (Lump Sum) Contract

The firm fixed price contract is preferred for most state contracting. The Purchaser's expenditures can be predicted, administration is minimal, and any financial risks are those of the Vendor. A fixed price contract has a firm maximum dollar figure. The Vendor accepts full responsibility for costs over and under the fixed price (lump sum) amount. The Purchaser's project manager should determine if the fixed price is reasonable under the circumstances of the particular project. Where future costs are uncertain, two variations may be considered:

Fixed Price with Economic Price Adjustments – Subject to economic indicators or occurrences specified in the RFP, the contract provides for price adjustments that allow for upward or downward revision of price.

Government indices or other factors in the price adjustment formula should reflect conditions industry wide, and the burden of proof for a price increase rests with the

Vendor. The contract must call for sufficient lead time on price increases to permit necessary adjustments by the program affected. The Vendor bears all risks, except for the identified areas of price adjustment, and retains the incentive to manage the work and costs effectively. In practice, the Vendor may find that it is possible to absorb some cost increases to the benefit of the Purchaser.

Time and Materials Contract

Under time and materials contracts, the state pays a fixed hourly rate and for the costs of certain specified materials. The nature of these contracts may discourage efficiencies on the part of the Vendor. Therefore, these contracts should have a ceiling amount which the Vendor may exceed at his/her own risk. This type of remuneration may be used if the Purchaser is unable to specify the tasks that will be performed. A time and materials contract places most of the risk on the Purchaser and none on the Vendor. Frequent contract monitoring is required to ensure that the number of labor hours is kept to a reasonable level.

Cost-Reimbursable Contract

This is a contract in which the Vendor is reimbursed for its costs rather than payment based solely on the amount and quantity of service rendered. Cost reimbursable contracts almost always include a budget with a line item for each type of cost. When entering into a cost-reimbursable contract, agencies must make a clear determination of allowable costs. This type of contract is used when Vendor compensation cannot be based on performance or deliverables. In such cases, the Purchaser makes as reasonable an estimate of cost as possible. Cost-type contracts generally have a limited application in contracting for services. Implicit in this type of contract is the complete disclosure of costs by the Vendor and Purchaser Project Manager's ability to monitor the costs.

Two variations of cost-reimbursable contracts are:

Cost Plus Fixed Fee – This is the most frequently used form of a cost reimbursement contract. In this type of transaction, the Purchaser and Vendor agree on the total estimated cost of the project and the allowable fee or profit to be earned by the Vendor. Allowable costs are agreed upon prior to contract award to prevent ambiguity. If actual costs are lower than estimated, the Vendor will earn a higher percentage fee of costs. If the costs are higher than estimated, the Vendor does not earn any fee.

Cost Plus Incentive Fee – Incentive contracting requires identifying significant measurable factors on which to place the incentives. Cost is always a reasonable factor. Rather than a fixed fee, the contract form has a minimum fee and a maximum fee. An under-run earns a reward and an overrun is not rewarded.

Performance completion dates are also candidates. The Vendor is rewarded for timeliness, but not for untimeliness. Selecting these events and establishing an acceptable incentive formula represent major negotiating tasks.

Cost-reimbursable contracts are difficult to monitor and require increased contract administration to verify expenditures. In addition, some federally-funded cost reimbursement contracts are subject to special audit requirements under the Single Audit Act described in Office of Management and Budget Circular No. 133.

The contract should state whether the Purchaser will pay expenses incurred by the Vendor and, if so, which ones. Such expenses may include airfare (economy or coach class), lodging and subsistence necessary during periods of required travel, expenses incurred during travel for telephone, copying and postage, and private vehicle mileage. If other types of

expenses are to be allowed, they must be clearly defined. Travel expenses are generally reimbursed at the current state travel reimbursement rates.

The contract should state the maximum dollar amount allowed for expenses.

4. Pricing*(required term)*

- 4.1. The Vendor agrees to provide the Purchased Services at the costs, rates, and fees set forth in *[Schedule A/Statement of Work/fill in appropriate document where rates can be found]* this Contract. No other costs, rates, or fees shall be payable to the Vendor for Services performed hereunder.
- 4.2. *[Applicable only if contract provides for subsequent extensions.]* At least one hundred-twenty (120) calendar days before the end of the then current term of this Contract, the Vendor may propose rate increases by written notice to the Purchaser Contract Administrator. Price adjustments will be taken into consideration by the Purchaser Contract Administrator when determining whether to extend this Contract.

This section must include all elements relating to cost and payment, such as maximum contract cost, rates for persons providing service, number of hours of service, unit prices, cost per deliverable, allowable expenses and rates, total authorized for expenses, and payment and invoicing procedures. Clearly defining cost elements authorized for reimbursement will avoid confusion in the future.

5. Advance Payment Prohibited*(required term)*

No advance payment shall be made for Purchased Services furnished by Vendor pursuant to this Contract.

Advance Payments Prohibited – All payments must be made after the delivery of services. Agencies cannot issue payment for services prior to the performance of work. Agencies must not pay for any service prior to receipt thereof, per the Washington State Constitution, Article VIII, Section 5, "Credit Not to be Loaned."

6. Taxes

The Purchaser will pay sales and use taxes imposed on the Services acquired hereunder. The Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, taxes based on the Vendor's income, or personal property taxes levied or assessed on the Vendor's personal property to which the Purchaser does not hold title.

Taxes – To identify tax liability and exemptions for the contract

7. Invoice and Payment*(required term)*

[If this is a simple contract for \$10,000 or less only the following paragraph need be included.]

Invoices for work performed shall be submitted, in writing to the Purchaser Contract Administrator, in a format designated by the Purchaser Contract Administrator. In addition to agreed upon charges, invoices shall include such information as is necessary for the Purchaser to determine the exact nature of all expenditures and shall reference this Contract number [XXX-XXX-XXX]. Additional payment terms or invoice instructions may be agreed upon by the Purchaser and the Vendor.

[If this is a complex contract or is for more than \$10,000 use the following paragraphs.]

- 7.1. Invoices for work performed shall be submitted, in writing to the Contract Administrator, in a format designated by the Contract Administrator. In addition to agreed upon charges, invoices shall include such information as is necessary for Purchaser to determine the exact nature of all expenditures and shall reference this Contract number [XXX-XXX-XXX]. Additional payment terms or invoice instructions may be as forth in the Statement of Work executed by and between the Purchaser and the Vendor.
- 7.2. Such payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of such goods or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.3. Incorrect or incomplete invoices will be returned by the Purchaser to the Vendor for correction and reissue.
- 7.4. If the Purchaser fails to make timely payment, Vendor may invoice the Purchaser one percent (1%) per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is postmarked within thirty (30) calendar days of receipt of properly prepared invoices.

It is helpful to include invoicing instructions in the contract. The Purchaser may require use of State Form A-19, Invoice Voucher, for submittal of requests for payment and may state how often invoices should be submitted. Invoices in whatever form submitted must contain sufficient detail and back-up documentation to determine the appropriateness of the charges.

Payment and Invoice Provisions- To establish provisions for the timing of payments and establish conditions for delinquency and penalties

8. Overpayments to Vendor

Upon notice thereof, Vendor shall promptly refund to Purchaser the full amount of any erroneous payment or overpayment to which Vendor is not entitled pursuant to this Contract.

Vendor Responsibilities

9. Purchased Services and Statement of Work~~required term~~)

Purchased Services shall be performed pursuant to the terms of this Contract and according to any Statements of Work executed in accordance with the terms of this Contract. The Statement of Work will designate the project or task objectives, scope of work to be performed, deliverables to be provided, Vendor's roles and responsibilities, Purchaser's roles and responsibilities, desired start and stop dates, primary work site, a list of necessary materials, the maximum cost for the Purchased Services, and any other special requirements.

10. Commencement of Work

No work shall be performed by Vendor until a Statement of Work is executed by Vendor and Purchaser and is received by the Vendor.

11. Ownership of Work Product~~(required term)~~

Unless otherwise provided, data which originates from this Contract shall be “works for hire” as defined by the U.S. Copyright Act of 1976 and shall be owned by the Purchaser. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Data which is delivered under this Contract, but which does not originate therefrom, shall be transferred to the Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so: PROVIDED, That such license shall be limited to the extent which the Vendor has a right to grant such a license. The Vendor shall exert all reasonable effort to advise the Purchaser, at the time of delivery of data furnished under this Contract, of all known or potential infringements of privacy or other intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. The Purchaser shall receive prompt written notice of each notice or claim of copyright infringement received by the Vendor with respect to any data delivered under this Contract. The Purchaser shall have the right to modify or remove any restrictive markings placed upon the data by the Vendor.

Vendor shall not use or in any manner disseminate such work product or program to any third party without the prior written permission of the Purchaser. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or duplicate any programs or work products or any portion thereof, in any form, or make any disclosure with reference thereto to any third party.

Ownership – To warrant that Purchaser is the owner of work product produced under the Contract.

12. Installation (Site) Security

While on the Purchaser’s premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations communicated to Vendor.

13. Use of Purchaser’s Property and Facilities

- 13.1. Any property of the Purchaser furnished to the Vendor shall be used only for the performance of this Contract.
- 13.2. The Vendor shall be responsible for any loss or damage to property of the Purchaser which results from willful misconduct or negligence on the part of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices, to ensure that the property will be returned to the Purchaser in like condition to that in which it was furnished to the Vendor. Upon the happening of loss, or destruction of, or damage to, any Purchaser property, the Vendor shall notify the Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 13.3. The Vendor shall surrender to the Purchaser all property belonging to the Purchaser upon completion, termination, or cancellation of this Contract. All reference to the Vendor under this section shall include any of its employees, agents, or Subcontractors.

14. Vendor Commitments, Warranties, and Representations

Any written commitment by the Vendor within the scope of this Contract shall be binding upon the Vendor. Failure of the Vendor to fulfill such a commitment may constitute breach and shall render the Vendor liable for liquidated or other damages due the Purchaser under the terms of this Contract. The

Purchaser agrees that Vendor will not be liable for damages caused by the Purchaser's actions or failure of the Purchaser to fulfill any of its responsibilities under this Contract.

15. Minority and Women's Business Enterprise (MWBE) Participation

[The following MWBE section is applicable only when MBE or WBE credit was given to Vendor's Response during evaluation of the competitive bid.]

Failure of the Vendor to comply with the established MWBE requirements as set forth in Vendor's Response (Exhibit B) and MWBE Certification (Schedule B) is a material breach of this Contract and may subject the Vendor to penalties and other remedies under Washington State Law.

Compliance with Minority- and Women-Owned Business Requirements – If minority- and/or women-owned business goals are required on the contract, a clause must be included stating that the Vendor will comply with Purchaser requirements to utilize minority- and women-owned businesses in contracting, subcontracting, or joint-venturing. The contract also identifies the name(s) of the firm(s), the type of work that will be performed by minority- and/or women-owned businesses, and its dollar value.

Failure on the part of the Vendor to meet MWBE specifications is a material breach of contract. In accordance with WAC 326-30-080, substitution of a selected MBE or WBE prime or Subcontractor is allowed only when the firm is decertified or indicates it is unable or unwilling to perform the work. The contracting Purchaser approves substitutions and may require the Vendor to substitute another certified MWBE to meet the contract specification.

16. Protection of Purchaser's Confidential Information

[If Purchaser has a unique category of confidential information, e.g., criminal records, health histories, etc., include those in the list below.]

- 16.1. Vendor acknowledges that some of the material and information which may come into its possession or knowledge in connection with this Contract or its performance, may consist of confidential data, the disclosure of which to, or use by, third parties could be damaging. Therefore, access to information concerning individual recipients of the State's services or individual clients, among other items, shall not be granted except as authorized by law or agency rule. Vendor agrees to hold all such information in strictest confidence, not to make use thereof for other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information, and not to release or disclose it to any other party. Vendor agrees to release such information or material only to Subcontractors who have signed a written agreement expressly prohibiting disclosure. Vendor further agrees to either destroy or return all such information at the end of the term of this Contract.
- 16.2. This section does not impose any obligation on the Vendor if the information is: (1) publicly known at the time of disclosure; (2) already known to the receiving party at the time it is furnished to the Vendor; (3) furnished by the Purchaser to others without restrictions on its use or disclosure; or (4) independently developed by the receiving party without use of the proprietary information.

Safeguarding of Information – The use or disclosure by any party of any information concerning the Purchaser for any purpose not directly connected with the service provided under the contract is prohibited.

Confidentiality – Vendor is required to maintain all information as confidential with regard to study findings and recommendations, the Purchaser's business and financial affairs, and any other proprietary information of the Purchaser.

17. Subpoena

In the event that a subpoena or other legal process commenced by a third party, in any way concerning the Services provided pursuant to this Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the such other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

Contract Termination

18. Termination for Default~~(required term)~~

- 18.1. If either the Purchaser or the Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party.
- 18.2. In the event of termination of this Contract by Purchaser, the Purchaser shall have the right to procure the Services that are the subject of this Contract on the open market and the Vendor shall be liable for all damages up to the maximum compensation payable under this Contract, including, but not limited to: (1) the cost difference between the original Contract price for the Services and the replacement costs of such Services acquired from another Vendor; (2) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (3) any other costs to the Purchaser resulting from the Vendor's breach. The Purchaser shall have the right to deduct from any monies due to the Vendor, or that thereafter become due, an amount for damages that the Vendor will owe the Purchaser for the Vendor's default.
- 18.3. If it is determined for any reason the failure to perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.
- 18.4. This section shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

Termination for Default – The contracting Purchaser will reserve the right to judge the competency of the Vendor at any stage of the contract. This term allows termination of the contract due to documented deficiencies in the Vendor's performance.

19. Termination for Convenience~~(required term)~~

- 19.1. When it is in the best interest of the Purchaser, the Purchaser Contracting Officer may terminate this Contract, in whole including all Statement(s) of Work or in part ~~by fourteen (14) calendar days or other appropriate length of time~~ written notice to the Vendor. Invocation of the Termination for Withdrawal of Authority or Termination for Non-Allocation of Funds sections

shall be deemed a Termination for Convenience but will not require such ~~fourteen (14) calendar days or other appropriate length of time~~ notice.

- 19.2. If this Contract or any Statement of Work is so terminated, the Purchaser is liable only for payments required by the terms of this Contract or any Statement of Work for Services received and accepted by the Purchaser.

Termination for Convenience – This term allows the contract to be terminated when it is in the best interest of the Purchaser.

20. Termination for Withdrawal of Authority

In the event that the authority of the Purchaser to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the Purchaser may terminate this Contract under the Termination for Convenience section. This section shall not be construed so as to permit the Purchaser to terminate this Contract in order to acquire similar Services from a third party.

21. Termination for Non-Allocation of Funds

If funds are not allocated to continue this Contract in any future period, the Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current period. The Purchaser agrees to notify the Vendor of such non-allocation at the earliest possible time. No penalty shall accrue to the Purchaser in the event this section shall be exercised. This section shall not be construed so as to permit the Purchaser to terminate this Contract in order to acquire similar Services from a third party.

Funding Withdrawn – In the event funding is withdrawn, reduced, or limited after the commencement of the contract but prior to completion, the Purchaser may terminate the contract under the "Termination for Convenience" clause without the required notice. If no periodic future payments are required under the Contract, this clause may be omitted

22. Termination for Conflict of Interest

- 22.1. The Purchaser may terminate this Contract by written notice to the Vendor if it is found, after due notice and examination, that there is a violation by any of the parties hereto of:

22.1.1. Ethics in Public Service, chapter 42.52 RCW; or

22.1.2. Any other laws regarding ethics in public acquisitions and procurement and performance of contracts.

- 22.2. In the event this Contract is terminated as provided above pursuant to a violation by the Vendor, the Purchaser shall be entitled to pursue the same remedies against the Vendor as it could pursue in the event of a breach of this Contract by the Vendor.

Conflict of Interest – The Purchaser may, by written notice, terminate the right of the Vendor to proceed if the Purchaser finds that any gratuity, bribe, extra payment in the form of entertainment, gifts or otherwise has been offered or given by the Vendor with the intent of securing the contract or receiving favorable treatment with regard to any aspect of the contract.

23. Termination Procedure

- 23.1. Upon termination of this Contract, the Purchaser, in addition to any other rights provided in this Contract, may require the Vendor to deliver to the Purchaser any property or Equipment specifically produced or acquired for the performance of such part of this Contract as has been terminated. The sections for the Treatment of Assets shall apply in such property transfer.
- 23.2. Unless otherwise provided herein, the Purchaser shall pay to the Vendor the agreed upon price, if separately stated, for the Services rendered by the Vendor and accepted by Purchaser: PROVIDED THAT, In no event shall the Purchaser pay to the Vendor an amount greater than the Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the Disputes section of this Contract. Purchaser may withhold from any amounts due the Vendor for such completed work or Services such sum as the Purchaser Contract Administrator determines to be necessary to protect the Purchaser from potential loss or liability.
- 23.3. After receipt of a notice of termination, and except as otherwise directed by the Purchaser, the Vendor shall: *(Delete steps below which are inapplicable to your contractual situation.)*
- 23.3.1. Stop work under this Contract on the date, and to the extent specified, in the notice;
- 23.3.2. Place no further orders or subcontracts for materials, Services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;
- 23.3.3. As soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Purchaser to the extent required, which approval or ratification shall be final for the purpose of this section;
- 23.3.4. Complete performance of such part of this Contract as shall not have been terminated by the Purchaser;
- 23.3.5. Take such action as may be necessary, or as the Purchaser Contract Administrator may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Vendor and in which Purchaser has an interest.
- 23.3.6. Transfer title, excluding licensed software, to Purchaser and deliver in the manner, at the times, and to the extent directed by the Purchaser Contract Administrator, any property which is required to be furnished to Purchaser; and
- 23.3.7. Provide written certification to the Purchaser that the Vendor has surrendered to the Purchaser all said property.
- 23.4. The Vendor shall pay within thirty (30) calendar days of notice the damages due Purchaser as the result of termination.

Termination Procedure – If the Purchaser terminates the contract, the Vendor is required to deliver to the Purchaser any property produced to the point of termination as part of the contract performance. The steps the Vendor must follow once a notice of termination is received are delineated.

24. Covenant Against Contingent Fees

[This section is required to be included only when federal funds are being used for the purchase.]

- 24.1. The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of the Vendor.
- 24.2. In the event of breach of this section by the Vendor, the Purchaser shall have the right to either annul this Contract without liability to the Purchaser, or, in the Purchaser's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

Covenant Against Contingent Fees – The Vendor warrants that no person or selling agent has been employed or retained to solicit or secure the contract. A firm cannot hire an individual to use "influence" to obtain a contract.

Disputes and Remedies

25. Disputes (*required term*)

[If this is a simple contract for \$10,000 or less only the following paragraph need be included.]

Both parties agree to exercise good faith in dispute resolution. Further, the Purchaser and the Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute.

[If this is a complex contract or is for more than \$10,000 use the following paragraphs.]

- 25.1. In the event a bona fide dispute concerning a question of fact arises between the Vendor and the Purchaser and it cannot be resolved between the parties with the aid of the Purchaser Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 25.2. Time is of the essence in resolving disputes. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days.
- 25.2.1. Then, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved after the three (3) Business Days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member.
- 25.2.2. Within three (3) Business Days of receipt of the initiating party's request, the responding party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
- 25.2.3. The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- 25.3. Both parties agree to be bound by the determination of the dispute resolution panel. *[Include this section whenever possible so the decision will be binding upon parties.]*
- 25.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible *[If previous section on decision of dispute resolution panel being binding is omitted from the contract add: "Unless irreparable harm will result, neither party shall commence litigation against the other before the dispute resolution panel has issued its decision on the matter in dispute."]*

- 25.5. The Purchaser and the Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute.
- 25.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

Disputes – When a bona fide dispute arises between the Purchaser and Vendor, remedy is provided via a disputes hearing. This dispute process will generally precede any court action.

26. Attorneys' Fees and Costs

- 26.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for Services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 26.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

Attorneys' Fees and Costs– General clause for payment of attorneys' fees

27. Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

28. Failure to Perform

If the Vendor fails to perform any substantial obligation under this Contract or any Statement of Work, the Purchaser shall give the Vendor written notice of such failure to perform. If, after fifteen (15) calendar days from the date of the written notice, the Vendor still has not performed, then the Purchaser may withhold all monies due and payable to Vendor, without penalty to the Purchaser, until such failure to perform is cured or otherwise resolved.

Failure to Perform– To establish that the State may withhold monies, beginning 30 calendar days after written notification that the Vendor has failed to perform any substantial obligation as stipulated in the contract

29. Limitation of Liability(*required term*)

- 29.1. The parties agree that neither the Vendor nor the Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This section does not modify any sections regarding retainages or any other such conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled

Termination for Default and Review of Vendor's Record are not consequential, incidental, indirect, or special damages as that term is used in this section.

- 29.2. Neither the Vendor nor the Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Vendor or the Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Vendor, the Purchaser, or their respective Subcontractors.
- 29.3. If delays are caused by a Subcontractor without its fault or negligence, neither the Vendor nor the Purchaser shall be liable for damages for delays, unless the Services to be furnished by their Subcontractors were obtainable on comparable terms from other sources in sufficient time to permit the Vendor or the Purchaser to meet its required performance schedule.
- 29.4. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Administration

30. Notices

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

to **Vendor** at: *[Vendor Name]*
 Attention: [Name]
 [Street Address]
 [City]
 [State and Zip]
 [Phone and fax numbers]

to **Purchaser** at: State of Washington
 [Purchaser]
 Attention: *[Contract Administrator/Officer, per Purchaser policy]*
 [Purchaser Street Address]
 Olympia, WA 98504{XXXX}
 [Phone and fax numbers]

Notwithstanding RCW 1.12.070, such communications shall be effective upon the earlier of receipt or four (4) calendar days after mailing. The notice address as provided herein may be changed by written notice given as provided above.

Notices – To define official addresses for formal notifications

31. Section Headings, Incorporated Documents and Order of Precedence

- 31.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

- 31.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
- 31.2.1. Applicable federal and state statutes, laws, and regulations;
 - 31.2.2. Sections of this Contract[*Contract Number*];
 - 31.2.3. Schedule A - Authorized Services and Rate List, to this Contract;
 - 31.2.4. Statement of Work, attached to this Contract;
 - 31.2.5. Exhibit A - State of Washington,[*Purchaser Name*]Request for [*Proposal/Quotation/Quotation and Qualification*] [(*RFP*)/(*RFQ*)/(*RFQQ*)]for [*Description of Acquisition*]dated [*Date*]; and
 - 31.2.6. Exhibit B - Vendor's Response to the Purchaser, dated[*Date*], including all written information provided with Vendor's response.

Contract Inconsistency – In the event of inconsistency between contract documents, the order of precedence of the documents should be stated. First, federal and state law prevails, then the contract; then, depending on the circumstances, either the Vendor's proposal, the Request for Proposals, etc.

32. Entire Agreement(*required term*)

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled Vendor Commitments, Warranties, and Representations understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or specifications of this Contract or any Statement of Work will be effective without the written consent of both parties.

Entire Agreement– To establish that the contract constitutes the entire agreement and supersedes all previous discussions, bid processes, and agreements, except as provided in Vendor Commitments, Warranties, and Representations. Specific documentation such as Vendor proposals, Equipment and Software specifications, communications regarding goods and services to be provided, etc. should be included in the contract by reference or attachment, where Vendor assurances and performance questions are concerned

33. Authority for Modifications and Amendments

- 33.1. Contract - No modification, amendment, alteration, addition or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the Vendor and the Purchaser. Only the Purchaser Contracting Officer or delegate by writing shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of the Purchaser.
- 33.2. Statement of Work - Any changes to a Statement of Work executed between the Purchaser and Vendor pursuant to the authority of this Contract shall be in writing and signed by an authorized agent of both the Purchaser and the Vendor.

Limitation of Authority – Only the Purchaser's delegate in writing shall have authority to alter or modify any clause or condition of the contract, and any change must be in writing signed by the delegee.

34. Changes and Modifications

[This option is intended to be utilized only for additions which are within the time, cost, and product scope of the original solicitation document; otherwise, a new competitive solicitation must occur.]

The Purchaser Contract Administrator, may, at any time, by written notification to the Vendor, make changes within the general scope of this Contract. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this Contract, an equitable adjustment may be made in the Contract price or period of performance, or both, and the Contract shall be modified in writing accordingly in accordance with the terms of this Contract. Any claim by the Vendor for adjustment under this section must be asserted within thirty (30) calendar days from the date of Vendor's receipt of the notice of such change: PROVIDED, However, that the Purchaser may, upon determining that the facts justify such action, receive and act upon such claim asserted at any time prior to final payment under this Contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the section of this Contract entitled Disputes. However, nothing in this section shall excuse the Vendor from proceeding with the Contract as changed.

Changes and Modifications – This sets out the terms for equitable adjustment if changes are made to the contract which impact cost or period of performance.

35. Purchaser Contract Administrator

The Purchaser shall appoint *[Name]* who will be the Purchaser Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Purchaser Contract Administrator will manage this Contract on behalf of the Purchaser and will be the principal point of contact for the Vendor concerning Vendor's performance under this Contract. The Purchaser shall notify Vendor, in writing, when there is a new Purchaser Contract Administrator assigned to this Contract.

Contract Representatives – The contract should identify by name or by position the persons responsible for representing the Purchaser and the Vendor as project managers in matters related to the execution of the contract. These individuals will be accountable for project performance and results.

36. Vendor's Account Manager

The Vendor shall appoint *[Name]* who will be the Account Manager for the Purchaser's account. The Vendor's Account Manager will be the principal point of contact for the Purchaser concerning the Vendor's performance hereunder and for receipt of notices. The Vendor's Account Manager will also serve as the focal point for business matters, support coordination, and administrative activities.

Contract Representatives – The contract should identify by name or by position the persons responsible for representing the Purchaser and the Vendor as project managers in matters related to the execution of the contract. These individuals will be accountable for project performance and results.

37. Independent Status of Vendor

The parties hereto, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever, nor will the Vendor make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, chapter 23B.16 RCW, or Title 51 RCW.

Independent Capacity – The contract should state that the Vendor is independent and neither the Vendor nor Vendor's employees are to be considered employees of the state. The state legitimately does not have to pay employee taxes such as workman's compensation, FICA, and unemployment compensation for contractors.

38. Governing Law*(required term)*

This Contract shall be governed in all respects by the law and statutes of the state of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

Governing Law – The contract shall be governed by the laws of the state of Washington. Since commercial law varies from state to state, it is important to include the governing law, particularly when dealing with out-of-state contractors.

Venue – The venue is the locality in which a trial would occur. Any lawsuit involving the contract would be filed in the county stated in this clause. For agencies in the Olympia area, for example, this is Thurston County.

39. Subcontractors

The Vendor may, with prior written permission from the Purchaser Contract Administrator, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of the Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Vendor to the Purchaser for any breach in the performance of the Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of the Vendor, and the Vendor further agrees to hold the Purchaser harmless from acts or omissions of the Vendor's Subcontractors, their agents, or employees subject to the limitations set forth in the Limitation of Liability section of this Contract. The Purchaser shall not be liable for any loss or damage resulting from personal injury, physical loss, harassment of employee, or violations of Patent and Copyright Indemnification section of this Contract occasioned by the acts or omissions of the Vendor's Subcontractors, their agents or employees. The Patent and Copyright Indemnification section of this Contract shall apply to all Subcontractors.

Subcontracting – This section is used to define conditions under which the Vendor can subcontract work. Generally, the Vendor's proposal will identify the Subcontractors. When the service of a Subcontractor is required after award, and was not identified in the original contract, the prime Vendor must request advance approval from the Purchaser for use of the selected Subcontractor.

40. Assignment

- 40.1. With the prior written consent of the Purchaser, which consent shall not be unreasonably withheld, the Vendor may assign this Contract including the proceeds hereof: PROVIDED, That such assignment shall not operate to relieve the Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to the Purchaser that may arise from any breach of the sections of this Contract, its supplements, or warranties made herein including but not limited to, rights of setoff.
- 40.2. With the prior written consent of the Vendor, which consent shall not be withheld unreasonably, the Purchaser may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington: PROVIDED, That such assignment shall not operate to relieve the Purchaser of any of its duties and obligations hereunder.

Assignment-- To establish that neither party shall assign, sublicense nor transfer its rights, duties, or obligations without written consent of the other party. If vendor performance or financial condition is a problem, it may be necessary to keep Vendor assignment at the Purchaser's sole option

41. Publicity (*required term*)

The Vendor agrees to submit to the Administrator all advertising, sales promotion, and other publicity matters relating to this Contract wherein the Purchaser's name is mentioned or language used from which the connection of the Purchaser's name therewith may, in Purchaser's judgment, be inferred or implied. The Vendor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of the Purchaser.

Publicity – To establish that the Vendor will not use any advertising, sales promotion, or any other publicity matters wherein the State's name may be specifically stated, implied, or inferred without the consent of the State

42. Review of Vendor's Records (*required term*)

- 42.1. The Vendor and its Subcontractors shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract and shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for one (1) year following the termination of litigation, including all appeals if the litigation has not terminated within five (5) years from the date of expiration or termination of this Contract.
- 42.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, access to these items will be provided within Thurston County. During the six (6) year period after this Contract term or five (5) year term following litigation, delivery of and access to these items will be at no cost to the State. The Vendor shall be responsible for any audit exceptions or disallowed costs incurred by the Vendor or any of its Subcontractors.
- 42.3. The records retention and review requirements of this section shall be incorporated by the Vendor in any of its subcontracts.
- 42.4. It is agreed that books, records, documents and other evidence of accounting procedures and practices related to the Vendor's cost structure, to include overhead, general and administrative expenses, and profit factors shall be excluded from the State's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

Records, Documents and Reports – Vendor shall maintain books, records and documents to reflect all direct and indirect costs expended in the performance of the contract for potential audit of billing statements.

General

43. Patent and Copyright Indemnification~~(required term)~~

- 43.1. Vendor will, at its expense, defend or settle any claim against the Purchaser that any Equipment, software, or work products supplied hereunder infringe any patent, copyright, utility model, industrial design, mask work or trademark. Vendor will pay resulting costs, damages and attorneys' fees finally awarded provided that Purchaser:
- 43.1.1. Promptly notifies Vendor in writing of the claim; and
- 43.1.2. Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 43.2. Vendor will pay all costs of such defense and settlement and any costs and damages awarded by a court or incurred by Purchaser, except costs paid to the Office of the Attorney General as legal fees. If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor at its option and expense, either to procure for Purchaser the right to continue using the software or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the software is enjoined by a court and the Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the software and refund its depreciated value. No termination charges will be payable on such Services. Depreciated value shall be calculated on the basis of a useful life of five (5) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of 365 days per year. In the event the software has been installed less than one year, transportation to the initial installation site paid by Purchaser shall be refunded by Vendor.
- 43.3. Vendor has no liability for any claim of infringement arising from:
- 43.3.1. Vendor's compliance with any designs, specifications or instructions of the Purchaser;
- 43.3.2. Modification of the software by Purchaser or a third party without the prior knowledge and approval of Vendor; or
- 43.3.3. Use of the software in a way not specified by Vendor;
unless the claim arose against Vendor's software or Services independently of any of these specified actions.

Patent and Copyright Indemnification - To establish responsibility of both parties in event of infringement of a patent, copyright, or other intellectual property right.

44. Save Harmless~~(required term)~~

Vendor shall protect, indemnify and save the Purchaser harmless from and against any damage, cost, or liability, including reasonable attorneys' fees resulting from claim, by third parties for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, agents, or Subcontractors.

Save Harmless – This clause protects the state and/or the Vendor from negligence or omission on the part of the other party, per RCW 4.92.270. The Vendor holds the state, agency, and agency employees harmless from claims, suits, or actions arising from the negligence or omission of the Vendor while performing the terms of the contract. Standard indemnification language is provided in the “Contracts and the Indemnification Clause” pamphlet published by the Department of General Administration, Office of Risk

Management. You may call (360) 902-7303 to request a copy of the pamphlet or to ask questions about this subject.

45. Insurance

[Insurance is to be required only when necessary for the type of purchase.]

- 45.1. Liability and Auto Insurance. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section with an insurance carrier or carriers licensed to conduct business in the state of Washington and approved by the Purchaser Contract Administrator, which approval shall not be unreasonably withheld. The minimum acceptable limits and types of coverage shall not be less than \$1 million commingled single limit per occurrence for each of the following categories:
 - 45.1.1. Public liability covering the risks of bodily injury, property damage and personal injury (including death);
 - 45.1.2. General Business Liability; and
 - 45.1.3. Automobile liability (owned or nonowned) covering the risks of public liability and property damage.
- 45.2. Premiums on all insurance policies shall be paid by Vendor or its Subcontractors. Such insurance policies provided for the Purchaser pursuant to this section shall name the Purchaser as an additional insured and shall have a condition that they can not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have first been given to the Purchaser by such insurer.
- 45.3. Vendor shall furnish to the Purchaser copies of certificates of all required insurance within thirty (30) calendar days of the execution date of this Contract.

Businesses which provide services to the state must carry liability insurance to protect the state's interests. Contractual insurance in a commercial general liability policy provides coverage to protect the state from risks assumed by the Vendor, whether oral or written.

Other types of insurance such as employers liability, fidelity, vehicle liability, professional liability or errors and omissions may be included in a purchased service contract based on the scope of work to be performed. For more specific information on insurance requirements, call the Department of General Administration, Division of Risk Management, (360) 902-7303.

46. Industrial Insurance Coverage

Prior to performing work under this Contract the Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. The Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Vendor, or any Subcontractor or employee of the Vendor, which might arise under the industrial insurance laws during the performance of duties and Services under this Contract.

When a state agency enters into a contract for a purchased service, it must ensure the state's interest if either the Vendor or someone employed by the Vendor is killed or injured while performing work under the contract. The answer to this question is determined by Washington's industrial insurance law, Title 51 RCW.

With few exceptions, Title 51 RCW holds the contracting Purchaser responsible for making sure that such coverage is provided. Exclusions are listed in RCW 51.12.020 and include sole proprietors, partners, corporate officers and others, unless they have selected optional coverage.

To promote compliance with Title 51 RCW and avoid unplanned financial liability for the payment of industrial insurance premiums, agencies should review RCW 51.08.070, RCW 51.08.180 and RCW 51.08.195 and determine whether a potential Vendor meets either the definition of "employer" or that of a "worker." Making this determination may require a complex analysis. To assist in determining whether the determination of "employer" or "worker" is applicable, please call the L&I Field Audit Program in Olympia at (360) 902-4752 or (360) 902-4769.

Agencies can verify a Vendor's compliance with Title 51 RCW by contacting the Vendor Registration Unit of L&I, Telephone: (360) 902-5202 in Olympia. In the event the Vendor is found to be noncompliant, the Purchaser may still enter into the contract but should notify the Vendor that no payments for service provided under the contract will be made until the Vendor furnishes evidence of full compliance. For long-term contracts, the Purchaser should require the Vendor to provide proof of continuous compliance with Title 51 RCW prior to release of final payment under the contract.

47. Licensing Standards

The Vendor shall comply with all applicable local, state, and federal licensing requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

Licensing Standards – The contracting Purchaser must advise the Vendor to register with the Washington State Department of Revenue prior to performing work under the contract. Vendor will be issued a State Uniform Business Identifier (UBI) number to be used in payment of state taxes under the contract. Out-of-state contractors performing work in Washington State are required to have UBI numbers. Vendor agrees to comply with applicable federal, state, county, or municipal standards for licensing and accreditation to assure quality of service.

48. OSHA/WISHA

[Use only if goods are being purchased.]

Vendor represents and warrants that its products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor further agrees to indemnify and hold the Purchaser harmless from all damages assessed against the Purchaser as a result of the failure of the items furnished under this Contract to so comply.

OSHA/WISHA – To establish that the Vendor warrants that its products are designed to meet federal and state safety and health regulations

49. Compliance with Civil Rights Laws *(required term)*

During the performance of this Contract, the Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. 12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of the Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in

whole or in part under the Termination for Default section, and the Vendor may be declared ineligible for further contracts with the Purchaser. The Vendor shall be given a reasonable time in which to cure noncompliance. In addition to the cancellation of this Contract, Vendor may be subject to penalties under federal and state law.

Compliance with Civil Rights Laws- To establish that the Vendor shall not discriminate against any person for reason of age, sex, race, creed, color, or national origin according to Title VII of the Civil Rights Act.) Noncompliance or refusal to comply with the nondiscrimination laws, regulations or policies may result in rescission, cancellation or termination of the contract.

50. Severability *(required term)*

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

Severability – To establish that if any provision of the contract is determined to be invalid, the other contract provisions are not automatically invalid.

51. Waiver *(required term)*

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

Waiver – This clause states that a waiver of a term or condition is not to be considered an ongoing waiver of such term or condition, and that term or condition of the contract may be waived only by the written consent of both parties.

52. Treatment of Assets

[Use only if one party will be using other's property.]

- 52.1. Title to all property furnished by the Purchaser shall remain in the Purchaser. Title to all property furnished by the Vendor, for which the Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in the Purchaser pursuant to the section titled Ownership of Work Product. As used in this section titled Treatment of Assets if the "property" is the Vendor's proprietary, copyrighted works, only the applicable license, not title, is passed to and vested in the Purchaser.
- 52.2. Any property of the Purchaser furnished to the Vendor shall, unless otherwise provided herein or approved by the Purchaser, be used only for the performance of this Contract.
- 52.3. The Vendor shall be responsible for any loss or damage to property of the Purchaser which results from the negligence of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices.
- 52.4. Upon loss, or destruction of, or damage to any Purchaser property, the Vendor shall notify the Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 52.5. The Vendor shall surrender to the Purchaser all property of the Purchaser prior to settlement upon completion, termination, or cancellation of this Contract.

52.6. All reference to the Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

Treatment of Assets – Title to all property furnished by the Purchaser and/or purchased by the Vendor as a reimbursable item under the contract shall remain with the Purchaser. The Vendor shall be responsible for loss to any such property and shall surrender the property upon completion of the contract.

53. Vendor's Proprietary Information

Vendor acknowledges that the Purchaser is subject to chapter 42.17 RCW, the Public Disclosure Act and that this Contract shall be a public record as defined in RCW 42.17.250 through 42.17.340. Any specific information that is claimed by the Vendor to be confidential or proprietary, must be clearly identified as such by the Vendor. To the extent consistent with chapter 42.17 RCW, the Purchaser shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Vendor's proprietary information, the Purchaser will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, the Purchaser will release the requested information on the date specified.

Protection of Proprietary Information- To establish protection of Vendor's rights and interests in technical information, Software products, copyrights, etc { * Proprietary information can be defined as any data, information, and computer programs and usually includes corrections, modifications, revisions, and copies thereof, whether in machine readable or visually readable form, containing information which is the property of and confidential to the Vendor. It is the responsibility of the Vendor to identify such proprietary information }

Contract Execution

54. Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

55. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

Counterparts: To provide for counterparts or duplicate originals of the contract.

In Witness Whereof the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Signature Blocks– To provide a statement of understanding and agreement followed by signature blocks

Approved

State of Washington,
[Purchaser]

Approved

[Name of Vendor]

Signature

Signature

Print or Type Name

Print or Type Name

Title Date

Title Date

The signature block should not appear on a page by itself. A portion of the text of the contract should be included at the top of the page.

Only those persons with authority to bind the parties may sign the contract document. The Purchaser representative who signs a contract must have delegated signature authority. The contract is considered executed when all authorized parties have affixed their signature.

It is good business practice to have the Vendor sign the document first. This ensures that full agreement has been reached by the Vendor with the terms, and the Purchaser can respond with its approval signature.

The contract is executed when it is signed by all authorized parties. Upon execution, signed copies of the contract should be provided to all interested parties including, but not limited to, the Vendor, the project manager, Purchaser contract office, and Purchaser accounting. In most instances, service may begin immediately or may be scheduled for a predetermined date.

Approved as to Form

State of Washington,
Office of the Attorney General

Signature

Print or Type Name

Assistant Attorney General

Title

Date

Each Purchaser is required to have its contract format approved as to form by the Attorney General's Office. Approval as to form by the Office of the Attorney General verifies legality of the contract instrument but does not imply concurrence in or approval of the content. Provided the contract format has been "approved as to form" by the Attorney General's Office, the assistant attorney general is not required to review each Purchaser contract when the approved format is used. Submittal to the assistant attorney general is required when varying from the approved contract format.

In addition to approval for form, it is often advisable to have contracts reviewed by the assistant attorney general for "substance and content." Some agencies submit all contracts to the Attorney General's Office for review of content; others submit only those on which there is a question as to substance or content.

Schedule A

Authorized Services and Rate List

Schedule A
Authorized Services and Rate List
for
Contract No. [XXX-XXX-XXX]
with
[Vendor]

Vendors are (Vendor is) authorized to provide **only the services identified in this Schedule A** under the above-referenced Contract.

[List information required to be included by the Vendor, e.g., Service Category, Service Level, Staff Name, Price, etc.]

This Schedule may only be modified in writing by the Purchaser Contract Administrator.

Schedule B

MWBE Certification

Schedule C

Statement of Work

FOR PURCHASED SERVICES
AGREEMENT NUMBER/[XXX-XXX-XXX]

The scope of work is the single most important element in the contract and requires the most original writing. This section documents all elements of the scope and magnitude of the project and reflects the mutual understanding of the parties regarding what is being contracted.

The scope must include a clear description of all services that will be provided. All work expectations, tasks, goals, deliverables, and milestones of the project must be clearly defined. Formal written reports required should indicate due dates. A timeline should be stated for any required oral progress reports. Do not take any work for granted or plan to handle some expectations by verbal agreement. If it is not included in the contract, its performance may not be required.

Any ambiguous provisions will be interpreted most strongly against the drafting party.

Work requirements should be written in an auditable, product-oriented manner. Products are reports, training sessions, or other tangible services. The clearest way to indicate who is responsible for the work is to use the active voice. Precede requirements with "The Vendor shall" or "The Purchaser shall." Use of the passive voice obscures who is responsible. The contract must hold the Vendor accountable for specified results. An auditable, product-oriented scope of work should include consequences for noncompliance such as non-payment or termination of the contract.

Work assignments of Vendor's staff should be included in the scope. This ensures that personnel shown in the proposal are assigned to the contract with the time commitments reflected in the proposal. This allows the Purchaser to effectively lock in time commitments of key Vendor personnel.

The scope of work may incorporate the contractor's proposal by reference, if all work elements are satisfactorily delineated.

1. PROJECT OVERVIEW/OBJECTIVES

2. CONTRACTOR'S ROLES AND RESPONSIBILITIES; PRIMARY WORK SITE; NECESSARY MATERIALS; AND SPECIAL REQUIREMENTS

3. PROJECT TIMELINE/PERIOD OF PERFORMANCE

4. SCOPE OF WORK and PROJECT DELIVERABLES

5. COST OF SERVICES

The parties acknowledge and accept the terms and conditions of this Statement of Work to Contract No [XXX-XXX-XXX]. In witness thereof, the parties have signed this Contract.

State of Washington, [Purchaser]

[Name of Vendor]

Signature Date

Signature Date

Name Title

Name Title